APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18,574

LEWIS W. TWOMBLEY,

Appellant,

vs.

CITY OF LONG BEACH, a California Municipal Corporation; MURRAY T. COURSON, City Auditor, of the City of Long Beach, California; STATE OF CALIFORNIA; and THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA,

Appellees.

[June 25, 1964]

Upon Appeal From the United States District Court for the Southern District of California, Central Division.

Before: BARNES, JERTBERG and MERRILL, Circuit Judges.

MERRILL, Circuit Judge:

The question presented by this appeal is whether the City of Long Beach, California, holds fee title to the submerged lands (lands covered by navigable nontidal waters) within its boundaries, free from any right in the State of California.

Appellant, as a citizen, resident and taxpayer of the City of Long Beach, has brought this action against Long Beach and the State of California, asserting that Long Beach has such fee title, but is wrongfully paying to the State a portion of its revenue from such lands under the erroneous assumption that it is legally obligated to do so. The complaint sought an injunction against further payments to the State and a declaration of Long Beach's title. Appellant asserts that the City's title was derived from the United States by the provisions of the Submerged Lands Act, 67 Stats. 29 (1953), chapter 31, 43 U.S.C. §§ 1301-1343. He invokes Federal jurisdiction under 28 U.S.C. §1331, upon the ground that the interpretation of an Act of Congress is essential to his claim.

The action was dismissed by the District Court of the Southern District of California, Central Division, for failure of the complaint to state a claim. This appeal followed.

Prior to *United States v. California*, (1947) 332 U. S. 19, it had generally been regarded as the law that title to submerged lands lay in the several states. By that decision title was held to be in the United States. The rights and investments under innumerable grants and leases from the states were placed in peril.

Congress dealt with the situation by the Submerged Lands Act, *supra*, Section 1311(a) states that "title to and ownership of the land beneath the navigable waters within the boundaries of the respective States, and the natural resources within such land and waters * * * is recognized, confirmed, established and vested in and assigned to the respective States or the persons who were, on June 5, 1950, entitled thereto under the

law of the respective States in which the land is located * * *."

Appellant's contention here is that by virtue of a grant from the State of California, Long Beach was, on June 5, 1950, the person entitled to the submerged lands within its boundaries.

By Act of the State Legislature, May 1, 1911, Long Beach was granted "all the right, title and interest of the State of California held by said State by virtue of its sovereignty in and to all the tidelands and submerged lands, whether filled or unfilled, within the present boundaries of said City * * *." The grant provided, however, that it was "in trust for the uses and purposes and upon the express conditions following." It was then specified that the lands so granted "shall be used by said City * * * solely for the establishment, improvement and conduct of a harbor" including facilities for the promotion and accommodation of commerce and navigation.

By later enactments the nature of the trust and the limitations upon use that it constituted were somewhat modified. In *City of Long Beach v. Morse*, (1947) 31 Cal. 2d 254, 188 P. 2d 17, it was held that revenues derived from the lands were also subject to the trusts imposed.

By Act of June 6, 1951, the State declared "free from the public trust," and thus took to itself, one-half of the oil revenues and all "dry gas" revenue derived by Long Beach from the lands so granted. That Act found and determined as fact that Long Beach, since 1939, had produced large quantities of oil, gas and other hydrocarbon substances from the lands conveyed and had derived substantial revenue

therefrom; that the expenditure of more than the sums left remaining subject to the trust "would be economically impracticable, unwise and unnecessary."

Subsequently, in *Mallon v. City of Long Beach*, (1955) 44 Cal. 2d 199, 282 P. 2d 481, the Supreme Court of California held that this statutory enactment had the effect of creating a resulting trust in favor of the State of California, and that the State and not Long Beach was entitled to the revenues freed from the statutory trusts.

Finally, by chapter 29 of the Statutes of 1956, the California State Legislature approved and directed a settlement between Long Beach and the State, and directed that subject to certain costs the City should pay over monthly to the State of California one-half of the oil revenue and all dry gas revenue derived from submerged lands.

Appellant contends that California had no right to impose conditions or trusts in its grant to Long Beach since it had at that time no title to the submerged lands. He contends that the City's title came not from California but directly from the United States; that California's only function in all of this was to point the finger at the person entitled, and only the United States, which has not done so, could impose restrictions.

Furthermore, appellant contends, California law does not establish the State's right to enforce the conditions imposed. As we understand appellant's position, he asserts that the law of California (as it existed prior to *United States v. California, supra*) respecting its right and title under the grant to Long Beach, is laid down in *City of Long Beach v. Marshall*, (1938)

11 Cal. 2d 609 82 P. 2d 362. There, in confirming Long Beach's title to the land, says appellant, the decision established California law to the effect that upon California's admission to the Union it had acquired title to submerged lands by virtue of its sovereignty, subject to certain public trusts; that by its grant to Long Beach it had parted with all proprietary ownership, retaining only that title which it had felt it held in trust for the public. By *United States v. California*, argues appellant, it was established that California had neither proprietary nor trust ownership. By the Submerged Lands Act, appellant argues, the United States granted proprietary ownership to California but imposed no public trust duties upon the State. Appellant reasons that the "trust" ownership which the State had retained was, under *United States v. California, supra*, in fact retained for the benefit of the United States which had not imposed trust conditions when it "granted" the land to Long Beach. Thus the trust conditions imposed by the State were terminated.

We cannot agree with appellant's position. It is clear from the Act itself and from legislative history that Congress, by the Submerged Lands Act, wished to confirm and not to undo or override arrangements theretofore made by the several states.

The majority report upon the bill, which became the Submerged Lands Act, Volume 2, U. S. Code Congressional and Administrative News, 83rd Congress, 1st Session, 1953, page 1385, 1423, states in part:

> "We are certain that until the Congress enacts a law consonant with what the states and the Supreme Court believed for more than a century

> was the law, confusion and uncertainty will continue to exist. Titles will remain clouded and years of vexatious and complicated litigation will result."

Therefore, the report states at page 1422, "the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various states."

The Act itself, in defining "grantees" and "lessees," §1301(d), states: "Provided, however, that nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests other than are described herein, and in their respective grants from the State or its predecessor sovereign."

In dismissing the action the district court states:

> "Plaintiff's technical argument fails to answer the point repeatedly made by defendants that Congress intended by the Submerged Lands Act to 'confirm' whatever conveyance of title the states had already made. Plaintiff cannot rely on the statutory conveyances made to Long Beach, while at the same time insisting that the conditions of trust contained in the conveyances be deleted."

We agree.

Appellant argues that even if the Submerged Lands Act is construed to confirm the pre-existing status of the City of Long Beach's ownership, subsequent California legislation appropriating part of the revenue produced is ineffective. This is so, appellant contends, because the statute (Cal. Stats. 1951, ch. 915) was enacted after *United States v. California* but before the Submerged Lands Act, a period during which California lacked ownership of the land.

It is true that California's decision to free certain revenues from the public trust was made subsequent to June 5, 1950. However, it is clear from *Mallon v. City of Long Beach, supra,* and *City of Long Beach v. Morse, supra,* that the right of the State to lay claim to surplus trust revenue arose out of the original grant to Long Beach in 1911, and that the Act of 1951 amounted to no more than a varying of the terms of the original trust as to the manner in which trust property was to be put to public use. The Act of 1951, then, did not impinge upon rights of Long Beach as of June 5, 1950. It dealt with trust property as to which Long Beach then was and had always been accountable to the State in accordance with such directions as the State from time to time should make.

Finally, appellant contends that even assuming California had the general power to impose trusts and conditions, it could not do so in the area of commerce and navigation, since the United States in the Submerged Lands Act itself, §1314, has expressly retained its powers of regulation and control of such lands and navigable waters "for the constitutional purposes of commerce, navigation * * *."

Even assuming merit in this contention (which we doubt) it cannot aid appellant. If the trust were illegally created, or the carrying out of the trust purposes become illegal after creation, Long Beach would have lost its sole claim to right as the State's grantee and would hold all revenues for the State on a resulting trust. See 3 Scott, Trusts, §§335, 345.3 (2d Ed.); 4 Scott, *supra,* §422.

Judgment affirmed.

APPENDIX "B"

STATUTE OF CALIFORNIA

Stats. 1925, p. 235; Stats. 1935, p. 793

by an act entitled "an act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, as amended by an act entitled "An act to amend Section 1 of an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, relating to the use of such tidelands and submerged lands," approved May 7, 1935, to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by said acts.

[Approved by Governor June 6, 1951. Filed with Secretary of State June 6, 1951.]

In effect September 22, 1951

Finding and Determination

The people of the State of California do enact as follows:

Section 1. It is hereby found and determined: That the City of Long Beach since 1939 has produced and is now producing large quantities of oil, gas and other hydrocarbon substances from lands conveyed to said city by an act entitled "An act granting to the City of Long Beach the tidelands and submerged lands of the State of California within the boundaries of the

said city," approved May 1, 1911, and by an act entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, as amended by an act entitled "An act to amend Section 1 of an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, relating to the use of such tidelands and submerged lands," approved May 7, 1935. That from the revenue derived therefrom, said city has constructed upon said lands, wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, at a cost of approximately thirty-five million dollars ($35,000,000). That said city has available and unexpended approximately seventy-five million dollars ($75,000,000), also derived from said source, for the uses and purposes required by said acts, and is now receiving and will continue to receive for many years approximately twenty-four million dollars ($24,000,000) per annum from said source. That, in addition thereto, said city obtains large quantities of "dry gas" derived from natural gas produced from said lands, which is sold by said city to domestic and other consumers. That by reason of the already large expenditure on such lands for the uses and purposes required by said act, the large additional sums available and to become available throughout the years for such purposes, the expenditure of more than a total of fifty per centum (50%) of such revenue, received and

unexpended and hereafter to become available for such uses and purposes, would be economically impracticable, unwise and unnecessary. That fifty per centum (50%) of all revenue heretofore derived and unexpended, and to be derived, by the City of Long Beach from oil, gas and other hydrocarbon substances, other than "dry gas," produced from lands conveyed by said acts, is no longer required for navigation, commerce and fisheries, nor for such uses, trusts, conditions and restrictions as are imposed by said acts. That none of the revenue heretofore derived, and to be derived, by said city from "dry gas" obtained from said lands is any longer required for navigation, commerce and fisheries, nor for such uses, trusts, conditions and restrictions as are imposed by said acts.

"Dry Gas"

For the purposes of this act, "dry gas" is defined to mean the gas directly produced from wells, which contains one-half of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

Declaration of Freedom From Public Trust, etc.

Sec. 2. That fifty per centum (50%) of all revenue heretofore derived and unexpended, and to be derived, by the City of Long Beach from oil, gas and other hydrocarbon substances, other than "dry gas," produced from lands conveyed by said above-entitled acts is hereby declared to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by any of said above-entitled acts. That all of

the revenue heretofore derived, and to be derived, by said city from "dry gas," obtained from said lands is hereby declared to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by any of said above-entitled acts.

APPENDIX "C"

ARTICLE II
CHARTER OF THE CITY OF LONG BEACH
ADOPTED IN 1923

Description of the boundary lines of the City of Long Beach.

* * * * (pertinent part only)

* * * thence southwest along said northwest line of Lot 10 and prolongation thereof to a point three miles distant from the line of ordinary high tide of the Pacific Ocean; thence westerly and parallel to said line of ordinary high tide and three miles distant therefrom to the prolongation southerly of the westerly line of Block 10. * * *

APPENDIX "D"

No. 18574

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEWIS W. TWOMBLEY,

Appellant,

vs.

CITY OF LONG BEACH, et al,

Appellees,

CARL WHITSON, a Taxpayer,

Amicus Curiae

MOTION OR SUGGESTION THAT FULL COURT REHEAR AND DECIDE ALL ISSUES OF CASE OR THAT IMPORTANT QUESTIONS OF LAW BE CERTIFIED TO SUPREME COURT OF THE UNITED STATES FOR DECISION OR INSTRUCTION

To the Honorable Presiding Judge and Associate Judges of the United States Court of Appeals for the Ninth Circuit:

The Movant, CARL WHITSON, respectfully moves the Court, or suggests, that a rehearing be granted and the important questions of law be fully decided by the full membership of the Court, or that im-

portant questions of law be certified to the Supreme Court of the United States for decision, guidance, or other appropriate actions by that Court, for the following reasons, to wit:

On June 25, 1964, this Court by a three-judge division, filed a decision affirming the Trial Judge in dismissing the action.

Some important questions of law were not decided, passed upon or mentioned.

The amount involved is so great, over FIVE BILLION DOLLARS ($5,000,000,000.00) and such public questions are involved, and property rights of so many states, cities, taxpayers and citizens are involved, that a rehearing and further decision are necessary and proper.

1. The question of whether or not the State is a proper "trustor" or settler of the lands involved; or whether the State itself is only a "trustee" of tide and submerged lands, was not decided.

2. The question of whether or not the State has legal authority to take lands or funds granted to or released to Long Beach by the United States under the Submerged Lands Act; and whether or not the State can impose a trust use on the lands and funds, was not decided.

3. The question of whether or not the State can legally use income from tide and submerged lands for general purpose, use, but at the same time require that the City use its income from such lands for harbors, commerce, navigation and fishing only.

4. The question of whether or not Congress in-

tended to "confirm" State law in effect prior to 1947 only, or did Congress intend to approve and confirm any future state laws and court decisions, by the passage of the Submerged Lands Act of 1953.

5. Can the State, if it is a trustor, revoke a grant of land in trust to a city where the State received valuable consideration and is receiving free use of the harbor as a valuable consideration for the grant in 1911?

6. Can the State, as trustor, revoke a grant in trust made to the city in 1911 when Section 2280 Civil Code of California forbid trustors from revoking trusts? (In 1931 Section 2280 C. C. was changed to permit "voluntary" trusts to be revoked by the trustor.)

7. Can the State revoke a grant in trust to a city of tidelands and lands under inland waters and retake the lands or income, or any part thereof, where the city has not violated the terms of the trust, and notwithstanding a state statute, Section 2280 C. C., which prohibits revoking trusts?

It is respectfully urged the above questions should be either decided by the full Court, or Certified to the Supreme Court of the United States for decision, advice, or disposition by it.

Respectfully submitted,

CARL WHITSON, *pro se*,
Amicus Curiae

APPENDIX "E"

CHAPTER 29

An act relating to the tide and submerged lands conveyed in trust to the City of Long Beach and the revenues derived therefrom and in connection therewith providing for fixing and determining the respective rights and interests of the State of California and the City of Long Beach in and to revenue from hydrocarbon substances extracted or derived from tide and submerged lands conveyed in trust to the City of Long Beach as affected by Chapter 915 of the Statutes of 1951; authorizing the Attorney General and the City of Long Beach to enter into stipulations with respect thereto; clarifying the uses of such tideland hydrocarbon revenues as were unaffected by said act of 1951; providing for State Lands Commission action in connection with said lands; and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 13, 1956. Filed with Secretary of State April 13, 1956.]

In effect immediately

The people of the State of California do enact as follows:

Section 1. As used in this act:

(a) "Long Beach tidelands" means those certain tide and submerged lands heretofore conveyed to the City of Long Beach upon certain trusts and conditions by Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925 and Chapter 158, Statutes of 1935.

(b) "Oil revenue" means the net proceeds received

by the City of Long Beach from the sale of oil, gas and other hydrocarbon substances (other than dry gas) derived from the Long Beach tidelands, after deducting moneys expended for the extraction and sale thereof and for the satisfaction of obligations attributable to such extraction or sale; "oil revenue" also includes the net receipts from the sale of property used in such extraction or sale, the cost of which has been or may be defrayed from proceeds from such hydrocarbon substances.

(c) "Dry gas" means the gas directly produced from wells, which contains one-half (½) of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

(d) "Dry gas revenue" means the reasonable wholesale market value of dry gas derived from, or attributable to production from, said Long Beach tidelands and received into the system of the municipal gas department of said City of Long Beach, and the net receipts to the City of Long Beach from the sale of tideland dry gas as such and which is not received into said system.

(e) "Tideland trust funds" means the Public Improvement Fund, Harbor Revenue Fund, Tideland Oil Fund and Harbor Reserve Fund in the City Treasury of the City of Long Beach, as said funds are presently established by the charter of said city.

(f) "Subsidence costs" means costs expended by the City of Long Beach with the prior approval of the State Lands Commission to remedy and protect against the effects of subsidence of the land surface

within the boundaries of the Long Beach Harbor District (as such boundaries are defined on April 1, 1956) and within the boundaries of the Long Beach tidelands situated outside of said harbor district. "Subsidence costs" shall not include moneys expended for the construction or reconstruction of bridges, nor any subsidence expense directly incurred for continued hydrocarbon production and deductible under subdivision (b) of this section.

Sec. 2. It is hereby found and determined:

(a) In that certain act entitled "An act declaring portions of revenue derived from lands conveyed to the City of Long Beach by an act entitled 'An act granting to the City of Long Beach the tidelands and submerged lands of the State of California within the boundary of the said city,' approved May 1, 1911, and by an act entitled 'An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions,' approved April 28, 1925, as amended by an act entitled 'An act to amend Section 1 of an act entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Long Beach upon certain trusts and conditions," approved April 28, 1925, relating to the use of such tidelands and submerged lands,' approved May 7, 1935, to be free from the public trust for navigation, commerce and fisheries, and from such uses, trusts, conditions and restrictions as are imposed by said acts," approved June 6, 1951, the Legislature declared fifty per centum (50%) of all revenue theretofore derived and unexpended, and thereafter to be derived, by the City of Long Beach from oil, gas

and other hydrocarbon substances other than dry gas produced from the Long Beach tidelands, and all of the revenue theretofore and thereafter derived from dry gas from said tidelands, to be free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by said acts of 1911, 1925 and 1935. On April 5, 1955, in the case of Mallon v. City of Long Beach, 44 Cal. 2d 199, the Supreme Court of California held that said act of 1951 effected a partial revocation of the trust created by said acts of 1911, 1925 and 1935 and resulted in a reversion to the State of California of the sums thus released from the trust, the City of Long Beach therefore holding said sums upon a resulting trust in favor of the State. Said Mallon case was thereafter remanded to the superior court for further proceedings and is now pending in said court awaiting trial on the merits or other disposition. Following said Mallon decision, the State instituted litigation against said city with the objective of recovering those moneys and assets declared by the Supreme Court to be held in resulting trust, to recover judgment for the amount of such moneys and assets as had been theretofore spent by said city and to enjoin the expenditure of other Long Beach tideland hydrocarbon revenues for purposes not authorized by said acts of 1911, 1925 and 1935. As a result of stipulations between the Attorney General and the City of Long Beach, there have been impounded in the hands of said city securities at par and cash aggregating approximately one hundred eleven million dollars ($111,000,000), subject to the additional impoundment of certain future

income from oil and dry gas, all of said impounded assets to be held intact by said city pending the final determination of said litigation. The City of Long Beach asserts and, in the absence of a compromise settlement and adjustment of the claims of the State against said city, intends to maintain and to litigate various defenses against said claims. In addition, said city claims certain credits or offsets against the claims of the State by reason of the expenditure of tideland hydrocarbon revenues for protective and remedial works occasioned by land subsidence and by reason of general tax revenues expended by said city upon the Long Beach tidelands. Under existing circumstances, disposition of said impounded funds and determination of the respective rights of the State and the city in the premises cannot be made except by extensive, complicated and time-consuming litigation, possibly including a lengthy court-supervised accounting, while the impounded funds will remain in a condition of enforced idleness. The continuance of the existing controversies between the State and the City of Long Beach, as well as the enforced idleness of the impounded funds, is contrary to the best interests of the people of this State, including the inhabitants of the City of Long Beach. A purpose of state-wide interest and benefit will be served by the determination of the respective rights and interests of the city and the State in and to past and future hydrocarbon revenues derived from the Long Beach tidelands. Such determination will so fix and clarify the respective entitlement of the State and the city as to permit the early termination of the pending litigation by means of stipulations between the State

and city and, so far as necessary or appropriate, through the entry of court orders, decrees and judgments. Such a disposition of the litigation will permit early liberation and utilization of the impounded sums for urgently needed public purposes and will avoid the public detriment incident to protracted litigation between the State and one of its major municipalities.

(b) As a result of said Mallon decision, other questions have arisen as to legally permissible purposes for the expenditure of hydrocarbon revenues from the Long Beach tidelands other than those specified in said act of 1951 as being freed from the tidelands trust. Under existing circumstances such questions must await determination in the litigation now pending between the State and the city. Until that time, the City of Long Beach is prevented from initiating and continuing numerous worth-while projects in and about the Long Beach tidelands which are or may be reasonably related to, and connected with, the purposes of the trusts upon which said lands were conveyed to said city. The trust purposes set forth in said acts of 1911, 1025 and 1935 were prescribed prior to the discovery of hydrocarbon deposits in the granted lands and were therefore conceived primarily as land use purposes. These purposes require restatement in view of the subsequent yield of substantial monetary revenues therefrom. It is to the public interest that the Legislature, to the extent permitted by the State Constitution, set forth the purposes of said trust in greater detail than heretofore, to the end that said purposes may be fulfilled without the delays incident to protracted litigation. To the extent that the Constitution may prevent the expenditure of

revenues (other than those payable to the State of California hereunder) for public purposes desired by the City of Long Beach, it is the belief of the Legislature that the Attorney General and said city should seek judicial determinations further defining said city's rights and duties in the premises.

(c) Some uncertainty exists as to the exact location of the boundaries of the Long Beach tidelands. Some uncertainty also exists as to whether certain wells in the Long Beach Harbor District have been and are producing oil, gas, and other hydrocarbon substances or dry gas from Long Beach tidelands or have been and are producing such substances from other land owned by the City of Long Beach. To settle these uncertainties will require the collection of a considerable amount of information and data, the conduct of surveys, and possible litigation.

(d) It is in the interest of the people of this State, including the inhabitants of the City of Long Beach, to declare by this act the amount of oil and dry gas revenue received or held by said city on and before January 31, 1956, for the use and benefit of the State of California free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935 heretofore referred to, irrespective of these uncertainties, but such declaration should not preclude appropriate resolution, by judicial determination or otherwise, of these uncertainties for the purpose of determining revenues to be accounted for by said city after January 31, 1956.

The total amount of oil revenue and dry gas revenue received or held by the City of Long Beach for the use and benefit of the State of California free from the public trust for navigation, commerce and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935 heretofore referred to, to and including January 31, 1956, is hereby found to be and fixed at the sum of one hundred twenty million dollars ($120,000,000).

Sec. 3. The Attorney General and the City of Long Beach are hereby authorized to enter into an appropriate stipulation or stipulations as may be necessary to finally determine any and all claims, demands, or causes of action as between the City of Long Beach and the State of California and arising out of, in connection with, or seeking to enforce any obligation of the City of Long Beach to account for or to pay oil revenue and dry gas revenue to or for the benefit of the State of California under this act or the acts of 1911, 1925 and 1935 as modified by the act of 1951 and by this act and for such other purposes as may be authorized or required by this act. In addition to the provisions required by this act, the stipulation may provide for other matters necessary to determine such claims, demands, or causes of action. The stipulation shall provide that the City of Long Beach shall pay the amount agreed upon in the stipulation, which shall in no case be less than one hundred twenty million dollars ($120,000,000), to the State Controller, together with interest and other increment from investments and deposits thereof received by said city between February

1, 1956, and the date of payment. Said payment shall be made in the form and manner and at the time hereinafter prescribed. Said payment shall be deposited in the State Treasury.

Sec. 4. (a) The stipulation shall provide that the payment prescribed by Section 3 of this act shall be accomplished by the transfer of United States securities and cash from the tideland trust funds * * *.

(d) The construction, reconstruction, repair and maintenance of that certain small-boat harbor project known as the Marina located adjacent to Alamitos Bay, together with structures and other facilities incidental thereto;

(e) The acquisition of property or the rendition of services reasonably necessary to the carrying out of the foregoing uses and purposes.

Sec. 8. (a) On or before October 1st of each year, the City of Long Beach shall cause to be made and filed with the State Lands Commission a detailed statement of all expenditures of oil revenue other than that required in the stipulation provided for in this act to be paid to the State, including obligations incurred but not yet paid. Said statements shall cover the fiscal year preceding its submission and shall show the project or operation for which each such expenditure or obligation is made or incurred.

(b) In addition to the other powers and duties specifically delegated to it by this act, the State Lands Commission shall have general responsibility in connection with the interests of the State under this act and the acts cited in subdivision (a) of Section 2 hereof, including authority to examine financial and operating records relating to the production and sale

of hydrocarbon products from the Long Beach tidelands and to conduct such other investigations and studies as it may deem necessary in connection therewith.

Sec. 9. Any decree or judgment entered on the stipulation provided for in this act shall be final as to any and all claims, demands or causes of action as between the City of Long Beach and the State of California and arising out of, in connection with, or seeking to enforce any obligation of the City of Long Beach to account for or to pay oil revenue and dry gas revenue to or for the benefit of the State of California under this act or any of the aforesaid acts, which claims, demands or causes of action accrued on or before January 31, 1956; otherwise the powers of the State of California over the Long Beach tidelands and over the grants evidenced by the acts of 1911, 1925 and 1935, as modified by the act of 1951 and by this act, including oil revenue and dry gas revenue received before or after January 31, 1956, and unexpended for trust purposes, and still subject to the public trust for navigation, commerce and fisheries and to the uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935, are hereby expressly reserved. Notwithstanding the foregoing provisions of this section, any net proceeds payable to said city prior to February 1, 1956 on account of extraction, production or sale of hydrocarbon substances derived from the Long Beach tidelands, and not received by said city prior to said date, shall, when and if ascertained and received, be accounted for and distributed in accordance with the provisions of Section 5 of this act.

APPENDIX "F"

(SENATE BILL #60, AS PASSED BY THE STATE AND APPROVED BY THE GOVERNOR)

CHAPTER 1964

An act relating to the tidelands and submerged lands granted by the State to the City of Long Beach and the revenues therefrom.

The people of the State of California do enact as follows:

Section 1. As used in this act:

(a) "Long Beach tidelands" means those certain tide and submerged lands, whether filled or unfilled, heretofore conveyed to the City of Long Beach upon certain trusts and conditions by Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925, and Chapter 158, Statutes of 1935.

(b) "Oil revenue" means the net proceeds received by the City of Long Beach from the sale or disposition of oil, gas and other hydrocarbon substances (other than dry gas) derived from, or allocated or assigned to, the Long Beach tidelands, including advance payments, after deducting moneys expended for the extraction and sale or disposition thereof and conducting repressuring operations and for the satisfaction of obligations attributable to such extraction or sale or disposition. "Oil revenue" also includes the net receipts from the sale of property used in such extraction or sale or disposition, the cost of which has been or may be defrayed from proceeds from such

hydrocarbon substances. "Oil revenue" shall not include the net proceeds from the sale or disposition of oil, gas and other hydrocarbon substances derived from, or allocated or assigned to, the Alamitos Beach Park Lands.

(c) "Dry gas" means the gas directly produced from wells, which contains one-half (½) of a gallon or less of recoverable gasoline per 1,000 cubic feet, or from which gasoline has been removed by processing.

(d) "Dry gas revenue" means the reasonable wholesale market value of dry gas derived from, or allocated or assigned to, or attributable to production from, or allocated or assigned to, said Long Beach tidelands and received into the system of the municipal gas department of said City of Long Beach, and the net receipts to the City of Long Beach from the sale of tideland dry gas as such and which is not received into said system.

(e) "Subsidence costs" means costs expended by the City of Long Beach with the prior approval of the State Lands Commission to remedy or protect against (1) the effects of subsidence of the land surface, heretofore or hereafter occurring, within the boundaries of the Long Beach Harbor District (as such boundaries were defined on April 1, 1956) and within the boundaries of the Long Beach tidelands situated outside of said Long Beach Harbor District, and (2) the effect of subsidence of the land surface, hereafter occurring, within any other portion of the city, which may be attributable, in whole or in part, as determined by the State Lands Commission, to production from the Long Beach tidelands. The cost

of repressuring operations shall not be considered a "subsidence cost," but shall be considered a cost of production, which shall be a deductible expense for the purpose of determining "oil revenue" under subdivision (b) of this section. "Subsidence costs" shall not include any costs deductible for the purpose of determining "oil revenue" under subdivision (b) of this section.

(f) The "undeveloped portion of the Long Beach tidelands" means the following described lands:

Beginning at the intersection of the northwesterly line of Block 50 of Alamitos Bay Tract as per map recorded in Book 5, page 137 of maps in Official Records of Los Angeles County, with the mean high tide line of San Pedro Bay thence S. 32° 03′ 00″ W. 18,228.31 feet more or less along the southwesterly prolongation of said northwesterly line of Block 50 to the seaward boundary of the City of Long Beach (as such boundary was defined as of March 1, 1964); thence in a northwesterly direction along said seaward boundary of the City of Long Beach to its intersection with the easterly boundary of the Long Beach Harbor District (as such boundary was defined on April 1, 1956); thence along said easterly boundary N. 17° W. 14,794 feet more or less, thence N. 52° 36′ 17″ west 170 feet more or less to the easterly line of the land described as Parcel "A" under that certain contract executed by the City of Long Beach and the Board of Harbor Commissioners of the City of Long Beach, dated March 12, 1947; thence northerly along said easterly line 4,123 feet to the northerly line of said Parcel "A"; thence westerly along said northerly line to the southerly prolongation of the

centerline of Pine Avenue 80 feet wide as per map of the Townsite of Long Beach recorded in Book 19, page 91 et seq. Miscellaneous Records of said County; thence northerly along said southerly prolongation to said mean high tide line thence in a southeasterly direction along said mean high tide line to the point of beginning, containing 6,100 acres more or less.

(g) "Person" means and includes any firm, corporation, association, partnership, or natural person.

(h) "Contractors' agreement" means and includes any contract, royalty arrangement or other agreement between the City of Long Beach (or any department, board or agency thereof) and any person or persons relating to the drilling for, developing, extracting, processing, taking or removing of oil, gas, and other hydrocarbons derived from, or allocated or assigned to, the undeveloped portion of the Long Beach tidelands or the estimated productive portion thereof (other than unit agreements, unit operating agreements and cooperative agreements authorized by Sections 6879 or 7058 of the Public Resources Code).

(i) "Alamitos Beach Park Lands" means those tidelands and submerged lands, whether filled or unfilled, described in that certain Judgment After Remittitur in The People of the State of California v. City of Long Beach, Case No. 683824 in the Superior Court of the State of California for the County of Los Angeles, dated May 8, 1962, and entered on May 15, 1962 in Judgment Book 4481, at Page 76, of the Official Records of the above entitled court.

Sec. 2. It is hereby found and determined:

(a) Since the enactment of Chapter 29, Statutes of 1956, First Extraordinary Session, exploration has

disclosed the existence of additional deposits of oil, gas and other hydrocarbons in and under the Long Beach tidelands which should be developed for the benefit and profit of the State of California.

(b) Such development will result in very substantial augmentations of the oil revenue currently received from the Long Beach tidelands. By reason of such augmentations, as well as previous expenditures of trust revenues for the construction of improvements within the City of Long Beach both within and without the Harbor District of said city, the continued expenditure in the future by the city of oil revenues in the percentage heretofore provided, for the uses and purposes required by law would be economically impracticable, unwise and unnecessary. Economically practicable, wise and necessary expenditures of oil revenue by the City of Long Beach are limited to the purposes hereinafter provided, and to the amounts hereinafter provided to be retained by the City of Long Beach. By reason of the increased amount of oil revenue hereinafter provided to be paid over to the State free from the public trust for navigation, commerce, and fisheries and from such uses, trusts, conditions and restrictions as were imposed by the acts of 1911, 1925 and 1935, it is necessary and desirable that the State have increased control over oil and gas production operations and standards as hereinafter provided.

(c) It is likewise imperative that such oil, gas and other hydrocarbons be produced with all measures necessary or proper in the interest of preventing, arresting or ameliorating any subsidence of the surface of any lands in the vicinity, which may be attributable

to such production; provided, however, that nothing in this act shall be construed as an admission by the State of California or the City of Long Beach that any such subsidence was in fact caused by such production, nor shall anything in this act be admissible in any proceeding as evidence of such causation.

(d) By Chapter 2000, Statutes of 1957, the Legislature authorized the State Lands Commission to bring any actions necessary to determine the boundaries of the Long Beach tidelands. In response to this legislation, the State of California in 1960 instituted an action against the city in the Superior Court of the State of California, County of Los Angeles, Action No. 747562, for the purpose of determining said boundaries. The State also concurrently filed a supplementary petition in a pending action between the State of California and the city, Action No. 649466, for the same purpose. In addition to the boundary line claim, the State asserts in each of said actions that certain lands, property, interests in property, and other things of value (which, together with the tidelands claimed are referred to as "litigated lands") held by the City of Long Beach are subject to the tideland trust and owned by the city in a trust capacity. Said actions have been consolidated for ial and are now pending in the Superior Court of the State of California, County of Los Angeles. The City of Long Beach is vigorously defending said actions and asserts various defenses against said claims of the State. The city also claims that the boundary line claim of the State is erroneous and improper and that it acquired and holds all of said litigated lands in its proprietary capacity and that it developed said liti-

gated lands in its municipal capacity including the use of general tax revenues. Under existing circumstances, disposition of said litigation and determination of the respective rights of the State and of the city in the premises cannot be made except through the continuation of extensive, complicated, expensive, and time-consuming litigation, including possibly a lengthy court-supervised accounting. Certain proceeds from oil and gas production have been impounded and said impounded funds will remain in a condition of enforced idleness in the absence of a compromise. The continuation of the existing controversies between the State and the city is contrary to the best interests of the people of the State, including the inhabitants of the city. A purpose of statewide interest and benefit will be served by a compromise determination of the bounary line and a compromise determination of the respective rights and interests of the State and city in, and the status of, said litigated lands, together with the oil and gas production from, and the use of, said litigated lands. Such determination will so fix and clarify the respective entitlement of the State and the city as to permit the early termination of the pending litigation by means of stipulations between the city and the State or dismissals, and so far as necessary or appropriate through the entry of court orders, decrees and judgments. Such a disposition of the litigation will bring about a closer cooperation between the people of the State of California and the City of Long Beach so that the time, efforts and money can be spent for urgently needed public purposes and avoid the public detriment incident to protracted litigation between the State and one of its major municipalities. Com-

promise of the litigation will also avoid the continuation of the collection of the considerable amount of the information, data, and surveys, which does not promote the best interests of the people of the State of California. It is essential to the public interest to resolve the uncertainty which exists as to the true location of the mean high tide line and as to the exact boundary line between the tide and submerged lands and lands owned by the city in its municipal capacity. It is not the purpose of the compromise hereby authorized to transfer any title but rather, by stipulation, to fix and establish a boundary which is presently uncertain and in doubt. For these, among other reasons, the Legislature finds and declares that the litigation should be compromised as provided in this act and that said compromise is fair, legal and equitable to both the State of California and the City of Long Beach.

Sec. 3. It is hereby ordered that the City of Long Beach and the State Lands Commission are to proceed to prepare a contractors' agreement and any other necessary contracts or agreements for the production of oil, gas and other hydrocarbons from the undeveloped portion of the Long Beach tidelands (or the estimated productive portion thereof), in accordance with good oilfield practice and prevention of land surface subsidence incident thereto.

Sec. 12. The first eleven million dollars ($11,000,000) of oil revenue and dry gas revenue payable to the State of California under this act each year shall be deposited in the California Water Fund.

* * * There are 26 more pages of the Act which we consider unimportant to the case at bar.